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AMP PLUS, INC. d/b/a Elco Lighting

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DMF, Inc., a California corporation,
Plaintiff,

v.

AMP PLUS, INC., d/b/a ELCO
LIGHTING, a California corporation;
ELCO LIGHTING, INC., a California
corporation,

Defendants.

AMP PLUS, INC., d/b/a ELCO
LIGHTING, a California corporation;

Counterclaimant,

v.

DMF, Inc., a California corporation,
Counter-Defendant.

Case No. 2:18-cv-07090-CAS-GJS

**DECLARATION OF LOUISE
GARDNER IN SUPPORT OF
OPPOSITION TO PLAINTIFF DMF,
INC.'S MOTION FOR
PRELIMINARY INJUNCTION**

Date: January 7, 2019
Time: 10:00 a.m.
Location: Courtroom 8D,
350 West First Street, Los Angeles, CA

1 I, Louise Gardner, declare as follows:

2 1. I am a mechanical engineer with over thirty years of experience and
3 expertise in the lighting industry. I have been retained by the law firm of Bryan Cave
4 Leighton Paisner LLP on behalf of Defendant AMP Plus, Inc. dba Elco Lighting
5 (“Elco”) in this case. I have been asked to express my opinions on specific matters
6 pertaining to the recessed lighting space. I make this declaration in support of Elco’s
7 Opposition to Plaintiff DMF, Inc.’s (“DMF”) Motion for Preliminary Injunction. I
8 have personal knowledge of the matters contained herein. If called as a witness in this
9 action, I could and would testify to these matters.

10 **Educational and Professional Background**

11 2. In addition to engineering, I have experience in marketing, sales, general
12 management and new product development exclusively in the lighting industry. I am
13 currently a consultant to the industry providing technical advice, strategy, multi-
14 generational product planning and marketing to a variety of companies. A true and
15 correct copy of my current resume is attached hereto as Exhibit 1.

16 3. Because of my many years of experience in the lighting industry, with a
17 focus on recessed lighting, I am considered a leader in the recessed product
18 development community.

19 4. My technical background in the lighting industry started as a young
20 engineer working at Cooper Lighting (now Eaton) in the engineering department as a
21 project engineer. Not long after I was at Cooper, I was promoted, as the Lead
22 Engineer, onto a new product development team that created Iris Lighting Systems.
23 Iris Lighting Systems is considered a ground breaking residential recessed product
24 family of modular components that easily snap together for a wide variety of options,
25 widely considered the largest and most successful product launch in the history of
26 Cooper-Eaton Lighting. Iris Lighting Systems also garnered two patents for me, one
27 of which is cited on the US9964266B2 patent from DMF. The additional patent,
28 US5951151, is also for recessed lighting. After this position at Cooper Lighting I

1 went on to work for several other brands at Cooper Lighting. Additionally, I held the
2 position of Director of Marketing and Engineering at Nora Lighting in Los Angeles, a
3 direct competitor of DMF and ELCO. Most recently I have served as the Vice
4 President of Product Innovation at SLV Lighting in Tampa Florida. My resume,
5 Exhibit 1, provides additional details on my experience.

6 **Summary Of Opinions**

7 5. I am very familiar with the recessed lighting market. For the past 30
8 years, I have worked in the lighting industry, developing new products and often doing
9 competitive analysis during the due diligence of the new product development cycle. I
10 am familiar with both DMF and ELCO and their product offerings as I have designed
11 and developed similar products in the recessed lighting industry. I have reviewed in
12 detail their product information on their websites regarding the DMF DRD2 and Elco
13 ELL LED modules. I have also reviewed in further detail many similar products that
14 are offered in the lighting market today, and am familiar with the various companies
15 competing in the recessed lighting space today and their product offerings.

16 6. I was asked to express my views on the following: (1) DMF's product
17 literature regarding its OneFrame system and DRD2 module; (2) what suppliers and
18 products compete with DMF and its OneFrame system and DRD2 module; and (3) in
19 what "tier" of the lighting industry is DMF.

20 7. Here is a summary of my views on each of these topics:

- 21 a. In my opinion, DMF's marketing and messaging regarding its OneFrame
22 system and DRD2 modules is confusing and misleading to the public, in
23 particular regarding descriptions of DMF's outlet boxes and fire-rating
24 aspects of its products.
- 25 b. Based on my experience in the industry and my review of materials in
26 this matter, it is my opinion that DMF's DRD2 LED module resides in a
27 very competitive and dynamic market. Recessed lighting is the most
28 competitive type of lighting in the industry. A very wide range of

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1 manufacturers and brands compete in the recessed lighting space.
2 DMF's OneFrame system and DRD2 module compete in this crowded
3 space against those many manufacturers, brands and products. So does
4 Elco's ELL module. DMF's DRD2 module does not compete solely
5 against Elco's ELL module, and vice versa. There are numerous reasons
6 or factors why customers select different recessed lighting products,
7 including but not limited to distributor stocking levels, brand loyalty,
8 pricing, functionality, aesthetics, one-stop-shopping simplicity, and so on.
9 In the past 5 to 7 years, the recessed lighting market has experienced an
10 onslaught of new, more cost-effective products from many manufacturers
11 developed for the multi-family building market. This has added
12 complexity and increased competition amongst the numerous players and
13 driven down pricing.

14 c. I have known both brands, DMF and Elco, for many years. Over the
15 years, I have reviewed each of their websites and seen their products at
16 Lightfair International, the major annual lighting trade show, which I
17 have attended for more than 20 years. My opinion is that these two
18 companies are fairly similar, in tier and product offering, considering the
19 wide variety of recessed products available in the market. Both DMF
20 and Elco are considered to be in the lower tier for commodity grade
21 products.

22 **Concerns Regarding the DRD2 Fire-Rated Outlet Box and Message to the Public**

23 8. I have reviewed DMF product literature and specification sheets from
24 2015 to the present, as well as information on DMF's website (www.dmflighting.com
25), regarding its OneFrame system and the DRD2 module and junction/outlet boxes
26 recommended for use therewith. These materials include DMF's December 2015,
27 July 2016 and August 2018 product brochures for its OneFrame system, true and
28 correct copies of which are attached hereto collectively as Exhibit 2; and DMF's

1 January 2017 specification sheet for its junction boxes model nos. DRDHNJD and
2 DRDHNJF for its OneFrame system using its DRD2 module, a true and correct copy
3 of which is attached hereto as Exhibit 3.

4 9. The way DMF describes its DRD2 red outlet box is concerning in that
5 DMF describes it as a quick solution for a two-hour fire-rated box. The original
6 language DMF used (in its 2015 product brochure) contains the following description:
7 “DRDHNJD metallic outlet box certified UL514A up to 2-hour fire rating.” See
8 Exhibit 2. This wording implies that the housing/outlet box is automatically approved
9 up to a two-hour fire rating when installed. But the DRDHNJD is not a simple
10 solution, and it must be accompanied by an additional assembly. The only way the
11 DRDHNJD housing/outlet box can be rated for a two-hour fire rating is if it is installed
12 in a ceiling of gypsum board with the proper fire-rating.

13 10. In its 2015 OneFrame brochure, DMF represents that all of your
14 “problems will disappear” with fire rated OneFrame system. Again, DMF makes no
15 mention of installation and assemblies required by to achieve 2-hour flammability
16 ratings.

17 **All the ratings you need for multifamily applications**

18 Beyond spatial limitations, multifamily applications pose challenges that most LED downlighting
19 isn't suited for. The specially designed OneFrame with DRD2 LED makes these problems
20 disappear. With Fire, Sound, Air Tight, Concrete Tight, IC, and Wet Location Ratings, you can
21 be confident that it's compliant in a wide range of situations.

22 11. I note that DMF has since changed their specification sheets to read:
23 “Code compliant for use in appropriate fire-rated assemblies up to a maximum of 2-
24 hours”. See Exhibit 4 attached hereto, which is a true and correct copy of a November
25 2018 specification sheet for the DRD2 and OneFrame system is attached hereto as
26 Exhibit 4.

27 12. This is a dramatic change in wording. However, many incorrect
28 specification sheets and brochures are likely still in the hands of consumers and/or
distributors and stores.

1 13. Additionally, DMF still has posted on its website a video promoting its
2 OneFrame system and DRD2 module that refers to multi-family buildings and states,
3 “All housings must meet fire rating requirements before being installed into certain
4 multi-family buildings.” This is a false statement. Fire rated housing/outlet boxes are
5 only required in a small portion of multi-family buildings. Typically, they are required
6 in path of egress areas such as hallways and stairwells for example. They are not
7 required throughout the normal living space. In my view, DMF makes this statement
8 to mislead customer regarding fire-rated fixtures and requirements and prompt them
9 into purchasing a fire-rated housing when it may not be necessary. .

10 **Highly Competitive and Changing Recessed Market – Disruption in the**
11 **Multi-Family Building Segment**

12 14. DMF recessed products reside in an incredibly competitive and dynamic
13 market space. There are well over 50 brands, each with several products that can be
14 and are purchased on a regular basis instead of the DMF DRD2 and related OneFrame
15 products. Just a few examples include Rayon, who offers a similar modular approach
16 to their recessed products. The Rayon Versa Trim family offers interchangeable
17 components and are field interchangeable. All a customer has to do is select a trim, an
18 LED module, similar to the DRD2, and then select a recessed housing. The RAB
19 Halite is another example of a very similar modular product offering that could easily
20 replace the DMF product on an order. Nora Lighting products are offered in a similar
21 modular fashion. There are many other competitors too numerous to mention who
22 offer competing recessed lighting products.

23 15. Sales and distribution methodologies for the recessed lighting industry is
24 complex. Customers may order one brand over another simply because it is in stock at
25 a favored distribution house; they may have loyalty towards one brand or another;
26 and/or they may purchase a “lighting package” from a conglomerate. For example,
27 Elco as a whole offers more product types than DMF. They offer undercabinet
28 lighting, exterior wall packs, track lighting, step lights and other products that DMF

1 does not offer. Many times a customer who needs an exterior wall pack and track
2 lighting for an apartment building may easily call out the Elco ELL product, or another
3 of Elco's recessed lighting products, as it is easier to do "One stop shopping" than to
4 shop around with multiple manufacturers. There are many reasons for selecting one
5 product over another and so many options in the industry from which to choose.

6 16. Additionally, in the past two to four years the multi-family space has
7 become even more complex, as it has shifted away from traditional housings as shown
8 in the examples below and specifically focused on recessed products that now fit
9 directly into j-boxes, or have their own j-box attached. This highly competitive market
10 focuses on rapid new product development and cost reductions versus traditional
11 recessed fixtures with a can style housing.

12 17. The below examples are traditional housings that we are seeing fade
13 away in the market.



Eaton Halo H995ICAT



1. Eaton Halo

23 Below is just one example of newly designed recessed fixtures with no plaster frame
24 or housing.



1 These new products have dramatically affected the competitive landscape for recessed
2 lighting, specifically in multi-family buildings, a popular use for the DMF OneFrame
3 product. Manufacturers have been desperate to find other ways to reduce costs and
4 stay competitive. Not only are DMF and Elco competing with traditional housing style
5 fixtures, there is now a new lower cost competitive market that is taking away
6 additional orders.

7 18. **Competitive Product Style Number 1: “Flat” or “Flush Mount”**
8 **fixtures.** Specific changes have been seen regarding multi-family buildings and
9 slim/flush mount lighting fixtures. These types of “flat” fixtures are wildly popular
10 with contractors and sales representatives. I know this from specific discussions with
11 lighting sales representatives and from similar products I have personally developed.
12 The reaction I have seen from the industry professionals regarding quotations and
13 sales of “flat” products for multi-family buildings has been surprisingly positive.
14 Following are two early examples of these newly design concepts in the industry.
15 These excerpts are from LED Magazine publication. Attached as Exhibits 5 and 6 are
16 true and correct copies of full articles regarding these products from the LED
17 Magazine.

18 **Philips announces slim flush-mount LED downlight delivering 980 lm**

19 Published on: September 30, 2014



24

25

26 [By Maury Wright](#)

27 Editor in Chief, LEDs Magazine and Illumination in Focus

28

RAB Lighting's 9W SKEET LED surface-mount fixture fits on standard junction boxes

Published on: December 26, 2014



Competitors in the “flat” style products include all of the major brands: Halo, Lithonia, Lightolier, Juno, Green Creative, and many smaller brands such as DMF, Nora Lighting, Elco and Elite Lighting.

19. **Competitive Product Style Number 2: “Canless” Design Recessed trim with J-Box mounted to top.** Additionally, as the industry continued to shift towards more economic solutions, companies like Lithonia launched “Canless” designs. These are recessed fixtures that have a j-box directly attached to the trim. Again, eliminating the need for a traditional housing, and going a step further by removing the need for a j-box to be installed within the wood joists of any installation. See Exhibit 7 attached hereto, which is a true and correct copy of sales sheet for Lithonia’s OneUp LED Downlights.



20. Since then they have taken the recessed lighting market for multi-family building in a completely different direction and have changed the dynamics of the recessed lighting market. Today there are the “canless” designs, with a j-box mounted on top of the recessed trim, and “flat” products, all of which are fiercely competing with each other in the market.

DMF and Elco Offer Lower-End Products – Neither are Considered Premium Brands

21. The recessed segment of the lighting industry is made up of a wide spectrum of manufacturers and brands. There are low-end commodity grade products sold at big box stores such as Home Depot. There are also very high-end products, only specified by the highest level of lighting designers and architects, and everything in between. It is my opinion, with over thirty years of developing, engineering, marketing and selling recessed products, that DMF and Elco are very similar when it comes to classification and reputation in the recessed lighting market. They are both in the low-end leaning towards more commodity-based products. Specification grade high-level products are manufactured by companies like USAI, Edison Price, Lucifer, Aculux, Iris Lighting Systems and Tech Lighting. Mid-range tier consists of Amerlux,

1 CSL, CREE, Prescolite and Calculite. Regarding the low-end, typically non-specified
2 group of brands, listed in my opinion are: Halo, Juno, Nora Lighting, ConTech,
3 Rayon, Elite, Elco, DMF and Liton. Attached hereto as Exhibit 8 are true and correct
4 copies of specification sheets for several high-end recessed products offered by some
5 of these manufacturers.

6 22. I can clearly state that DMF is not considered a premium brand for most
7 lighting professionals. For example:

8 **Example: DRDH Housing from DMF, compared to Elco and Halo**

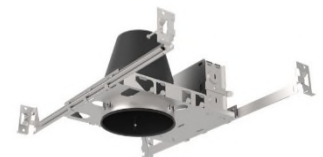


11

12 **DRDH 4" housing from DMF**



13 **Elco - EL39LDICA**



14 **Halo - H99 4"**

15 23. The DRDH housing from DMF is a 25-30-year-old design, where DMF
16 copied directly from the Halo H99 product line. As an industry professional, as soon
17 as I see this old and antiquated design, I immediately think of commodity grade, low-
18 end products. Under the Eaton umbrella, Halo is exceptionally large and well known
19 in the industry; however, the brand is positioned as a low-end cost-effective brand.
20 Also, under the Eaton umbrella is Iris Lighting Systems, positioned as a very high-end
21 brand with features that interest specifiers and are primarily used in high-end
22 residences. Referring to the examples above, the DMF product, the Elco product and
23 the Halo product are nearly the same and currently sold online for less than \$15.
24 Attached as Exhibit 9 are true and correct copies of screenshots I took from my
25 computer of these products available online from retailers. Although both DMF and
26 Elco offer a few products that are higher than the commodity examples above, they are
27 still considered by the lighting industry to be in the same industry tier associated with
28 commodity products.

24. High-end recessed lighting fixtures have and offer certain features that
are not available on low-end products. Of course, these features are only offered at a

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1 higher price category. The full spectrum of recessed lighting varies by brand and their
2 reputations in the lighting industry. For example, USAI and Iris Lighting systems are
3 considered high-end lighting fixture brands. Each offers a very wide variety of options
4 and features. One example is a unique feature called "center beam optics", which
5 provides a translating center beam as the light source rotates, providing more lumen
6 output at fully rotated angles. Most high-end brands also offer a wide array of options
7 including dim-to-warm technology, color tuning LEDs, good cutoff angle of 40
8 degrees or better, glare control (which is of utmost importance), over 360-degree
9 horizontal rotation and, often, a color rendering index ("CRI") option of 97 CRI.
10 None of these features are available on the DMF product. Additionally, I believe the
11 adjustable trim, model DRD4 uses a rotation mechanism that pulls the LED module
12 into the opening of the trim itself. This would be considered by most as a disruption
13 in the ceiling plane and undesirable. It also creates a high glare situation in the trim.
14 Typical adjustment mechanisms reside inside the fixture housing, and are relatively
15 unnoticeable from the room side. It is my opinion that this type of adjustment
16 mechanism would not be considered high end and would be a possible objection to
17 most specifiers.

18 I declare under penalty of perjury under the laws of the United States of
19 America and the State of California that the foregoing is true and correct.

20 Executed December 3, 2108, at Tampa, Florida.

21
22 By: 
23 Louise Gardner
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27
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